

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



DARLENE MCDAY, individually and
as Executrix of the Estate of Dante
Taylor, and TEMPLE MCDAY

Plaintiffs,

20-CV-233 (JLS)(JJM)

v.

STEWART ECKERT, Superintendent,
Wende Correctional Facility;
MARGARET STIRK, Unit Chief,
Wende Correctional Facility; KRISTEN
MURATORE, Forensic Program
Administrator, Wende Correctional
Facility; SERGEANT TIMOTHY
LEWALSKI; SERGEANT SCOTT
LAMBERT; CORRECTION OFFICER
McDONALD; CORRECTION OFFICER
FREEMAN; CORRECTION OFFICER
THOMAS WHITE; CORRECTION
OFFICER J. HORBETT;
CORRECTION OFFICER D. JANIS;
CORRECTION OFFICER MELVIN
MALDONADO; CORRECTION
OFFICER MARK COLLETT;
CORRECTION OFFICER
GREIGHTON; CORRECTION
OFFICER THEAL; CORRECTION
OFFICER BARON; JILL OLIVIERI,
R.N.; DIANE DIRIENZO, R.N.; LISA
PRISHEL, R.N.; DEBRA STUBEUSZ,
M.D.; ANJUM HAQUE, M.D.;
BERTRAM BARALL, M.D.; KELLY
KONESKY, LCSW-R; DANA
MANCINI, SW2; JOHN and JANE
DOES 1-10; and JOHN and JANE
SMITH 1-14,

Defendants.

DECISION AND ORDER

The claims in this action relate to the death of, and alleged assault upon, Dante Taylor—an inmate who was confined at Wende Correctional Facility. The case has been referred to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. §§ 636(b)(1)(A)–(C). Dkt. 23.

On February 28, 2024, Plaintiff Darlene McDay moved to amend the Complaint. Dkt. 281. Various defendants opposed the motion, *see* Dkt. 288-292, and Plaintiff replied. Dkt. 296. On April 12, 2024, Judge McCarthy issued a Report and Recommendation (“R&R”), recommending that the [281] motion be denied. Dkt. 299. No party objected to the R&R, and the time to do so has expired.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). For a “dispositive matter, the district court reviews *de novo* the parts of the R&R to which the parties object[,] and reviews for clear error the parts of the R&R to which the parties do not object.” *Allen v. United Parcel Serv., Inc.*, 988 F. Supp. 2d 293, 297 (E.D.N.Y. 2013) (citing Fed. R. Civ. P. 72(b)(3)). For a “non-dispositive matter, the district court reviews the R&R for clear error.” *Id.* (citing Fed. R. Civ. P. 72(a)).

Authority “is divided about whether a motion for leave to amend a complaint is a dispositive or non-dispositive matter.” *Id.* (citing *Jean-Laurent v. Wilkerson*, 461 Fed. Appx. 18, 25 (2d Cir. 2012)). But where, as here, “no party has objected to [the] R&R,” this “determination is not necessary,” because “review is based on the same ‘clear error’ standard” in either instance. *Von Rohr Equip. Corp. v. Tanner*

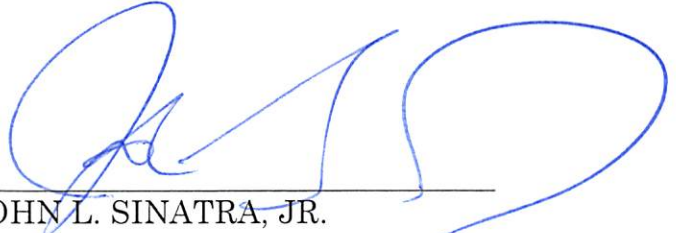
Bolt & Nut Corp., No. 17CV2913NGGRER, 2017 WL 5067406, at *1 (E.D.N.Y. June 12, 2017).

This Court has carefully reviewed Judge McCarthy's R&R and the relevant record. Based on that review, the Court concludes that the R&R is not clearly erroneous. As such, the Court accepts Judge McCarthy's recommendation.

For the above reasons, as well as those in the R&R, the [281] motion to amend is DENIED. The case is referred back to Judge McCarthy consistent with the June 29, 2020 referral order. *See* Dkt. 23.

SO ORDERED.

Dated: April 30, 2024
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE